

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BAYOU HEDGE FUND INVESTMENT
LITIGATION

06 MD 1755 (CM)

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THIS DOCUMENT RELATES TO:
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BROAD-BUSSEL FAMILY LIMITED
PARTNERSHIP, MARIA LOUISE
MICHELSON, MICHELLE MICHELSON, and
HERBERT BLAINE LAWSON, JR., Individually
And on Behalf of All Other Persons and Entities
Similarly Situated,

No. 06 Civ. 3026 (CM)

Plaintiffs,

vs.

BAYOU GROUP LLC, et al.,

DECLARATION OF
CHARLES GRADANTE

Defendants.

Electronically Filed

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Pursuant to 28 U.S.C. § 1746(2) (2004), I declare under penalty of perjury that the foregoing is true and correct:

1. My name is Charles Gradante. I am more than 18 years of age and understand the nature and obligation of an oath. I have personal knowledge of the facts and statements contained in this Declaration and each of them is true and correct.
2. I submit this Declaration in support of Hennessee Group, LLC (the "Hennessee Group"), Elizabeth Lee Hennessee and my (together the "Hennessee Defendants") Motion to Dismiss.

3. The Hennessee Group, a hedge fund advisory firm, is a Registered Investment Advisor with the Securities and Exchange Commission. The Hennessee Group
declaration of charles gradante - broad-bussel (2).doc

conducts due diligence and monitoring of hedge funds and pursuant to Investment Advisory Agreements, provides clients with recommendations concerning hedge fund investments for a fee. The Hennessee Group also provides its clients with various research tools including performance analytics, comparative analyses, manager interviews, risk assessments and monthly client statement "monitors". The Hennessee Group also prepares and provides clients with a Monthly Hennessee Hedge Fund Review, ongoing Manager Performance Monitor reports, Annual Hennessee Hedge Fund Manager Survey and Annual Hennessee Hedge Fund Investor Survey.

4. Elizabeth Lee Hennessee and I are Managing Principals of the Hennessee Group and are both domiciled in New York.
5. The Hennessee Group is organized under the laws of New York and has its principal place of business in New York.
6. Due diligence, including that performed with respect to the Bayou Hedge Funds, was performed by the Hennessee Group almost exclusively in New York. Moreover, the client statements, reports, reviews and other publications prepared by the Hennessee Group were also prepared in New York.
7. In connection with its business the Hennessee Group maintains a website located at www.hennesseegroup.com.
8. The Hennessee Group's website contains, *inter alia*, a Company Profile section. The "Who we are" section of the Company Profile section which states, in pertinent part:

At the Hennessee Group, pioneers in hedge fund consulting, we are committed to a singular mission: achieving the investment goals of our clients by applying the expertise, creativity and commitment of our people. Our business philosophy differentiates us from most of our competitors. We emphasize investment advice through "hands on" experience, direct client access to our managing principals and a conservative but creative corporate culture. **We do not market money managers. The investor is our client.** Our clients trust us to establish realistic investment objectives and develop diversified hedge fund portfolios. To achieve these goals, we apply our time tested advisory process and proprietary research tools.

We take great pride in our growth and success on behalf of our clients. In 1997, following eleven years as a business division of several major financial institutions, we formed

an independent entity, Hennessee Group LLC. We are "your strategic partner" in hedge fund investing.

Sincerely,

E. Lee Hennessee and Charles J. Gradante
(emphasis original)

(A copy of the "Who are we" section of the Hennessee Group's website is attached hereto as Exhibit A)

9. The Hennessee Group's website also contains "Comments of Hennessee Group LLC for the U.S. Securities Exchange Commission, Roundtable on Hedge Funds, May 14 – 15, 2003", which appears in the "SEC Hedge Fund Roundtable – May 2003" subsection of the "Featured Articles" section of the website.
10. The Comments of the Hennessee Group provides, in pertinent part, in section **XI What Types of Services Do Consultants Provide**, on page 18, that:

Consultants are value added and can provide a useful service to investors. We haven't surveyed the consulting industry, so Hennessee Group can only speak from its own vantage point.

(A copy of the Comments of the Hennessee Group is attached hereto as Exhibit B)

11. On or about April 2, 2001, Broad-Bussel Family Partnership and the Hennessee Group entered into a non-discretionary Investment Advisory Agreement (the "Advisory Agreement"), under which the Hennessee Group would provide consulting services to Plaintiff concerning Plaintiff's investments in hedge funds. Plaintiff and the Hennessee Group's agreement was memorialized in the Advisory Agreement, which both parties signed. A copy of the Advisory Agreement is attached hereto as Exhibit C.
12. The Advisory Agreement contains a governing law clause, which states:

Section XIII: Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of New York without giving effect to any conflict or choice of law provisions of that State, provided that nothing in this Agreement will be construed inconsistent with the Investment Advisers Act, or

any rule or order of the Securities and Exchange Commission under the Investment Advisers Act.

See Exhibit C, p. 7.

13. The Advisory Agreement also contains a broadly worded exculpatory clause that provides:

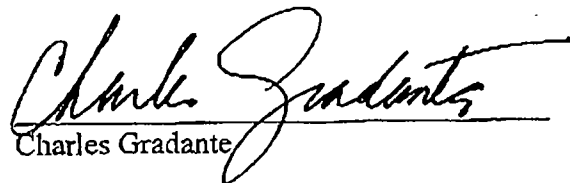
Client agrees to indemnify and hold Hennessee harmless from: (a) any liability, expense, judgment, amount paid in settlement or loss incurred as a result of Client's investment in a Hedge Fund for which Hennessee provided services as set forth in Section II [Hedge Fund Advisory Services] hereof; or (b) any loss arising from Hennessee's adherence to a Client's written or oral instructions; or (c) any act or failure to act, whether fraudulent or otherwise, by a Hedge Fund or its manager(s); affiliates; assigns; agents; employees or counterparties associated in any way with the Hedge Fund; or (d) any errors or omissions committed by Hennessee, its employees or agents in the discharge of its duties hereunder, unless such errors or omissions constitute gross neglect or willful misfeasance; provided, however, that this clause shall not relieve Hennessee from any liability imposed by federal or state securities laws or other applicable laws which cannot be waived.

See Exhibit C, Section VIII, p. 5.

14. All aspects of marketing, recommendations to clients and performing due diligence and monitoring of hedge funds is either done by the Individual Defendants or by employees who are under the direct supervision of one or both of the Individual Defendants.

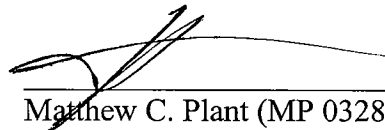
Under penalties of perjury, I declare that I have read the foregoing and that the facts stated herein are true.

Executed on May 31, 2006


Charles Gradante

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2006, a copy of the *Declaration of Charles Gradante* and exhibits thereto was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.


Matthew C. Plant (MP 0328)